

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
1500 11TH STREET
1ST FLOOR AUDITORIUM
SACRAMENTO, CALIFORNIA

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JAMES F. PETERS, CSR, RPR
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APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Ms. Caren Daniels-Meade

Mr. Chon Gutierrez

Mr. Tony Miller

Mr. John Mott-Smith

Mr. Bernard Soriano

STAFF

Ms. Brianna Lierman, Elections Analyst

Ms. Dawn Mehlhaff, Program Manager, Voter Outreach
Programs

Mr. Bill Wood, Staff Counsel

ALSO PRESENT

Ms. Kim Alexander

Mr. Austin Erdman, San Joaquin County Assistant Registrar
of Voters

Ms. Debbie Hensch, San Joaquin County Registrar of Voters

Mr. Joseph Holder

Mr. Frank Kaplan, Diebold Election Systems

Mr. Jim March

Ms. Sally McPherson, San Diego County Registrar of Voters

Ms. Laura Winslow, Solano County Registrar of Voters

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PROCEEDINGS

1
2 CHAIRPERSON KYLE: We have everyone, so I'll call
3 the meeting to order. We have one agenda item, which was
4 tabled and referred and rolled over to this meeting from
5 the last VSP meeting last week on Monday, November 3rd.
6 And we'll go through the staff report on the Agenda Item,
7 the only agenda item, Diebold Election Systems,
8 modifications to the AccuVote-TS. And then we'll go after
9 our staff. And then if the applicant or vendor has any
10 comments, we'd be happy to hear those at that time. And
11 then we'll open up for public comment. I do have three
12 cards as I mentioned. And we'll limit it to 2 or 3
13 minutes per person and then we'll act.

14 So having said that, I would like to invite the
15 staff to please give us their report.

16 MS. LIERMAN: Good afternoon. My name is Brianna
17 Lierman, and I will be speaking as to Diebold Election
18 Systems, and the modifications to AccuVote-TS.

19 Diebold Election Systems has applied for
20 certification of their Global Election Management System
21 for VIN 11818, referred to as GEMS, and also applied for
22 certification of their firmware version 44327, and for
23 modifications to their hardware.

24 They have incorporated a number of hardware
25 modifications into their AccuVote-TSx Electronic Ballot

1 Station. One being they have decreased the overall weight
2 of the ballot station from 48 pounds to 28 pounds. They
3 have achieved this by more fully incorporating the voting
4 tablet with the voting booth design.

5 The unit is now entirely self-contained, a
6 stand-alone unit, which is transportable like a large
7 brief case that closes up. And it's transportable with
8 the rubberized grip at the top of the booth.

9 A second modification is a detachable voting
10 tablet. When in use the tablet can be set in the cradle
11 in the voting booth or it can be detached. And it weighs
12 10 pounds, so it easily rests in a handicap voter's lap or
13 held in their hands.

14 A third hardware modification is the relocation
15 of the head set and the key pad. The headset and the key
16 pad when not in use can be stored in the underside of the
17 electronic ballot station base. When in use the key pad
18 can be snapped into the matching slot located on the
19 electronic ballot station or it can be held in the voter's
20 hands.

21 The headphones can rest on the right-hand privacy
22 screen -- right-hand privacy panel, excuse me, and are
23 plugged into an audiojack located at the front of the
24 voting unit.

25 There are also a number of firmware modifications

1 incorporated into the AccuVote-TSx Electronic Ballot
2 Station. One being the ability to return to the
3 instruction screen while voting. The voter can do this by
4 touching the instructions button located on the bottom of
5 the screen anytime while voting. They can return to the
6 instructions screen any time they want.

7 A second modification is the ability to
8 self-select the font size while voting. To do this, the
9 voter returns to the instruction screen, as I just
10 explained, by touching the instructions button. They can
11 choose large size text if they want to.

12 A third modification is the ability to
13 self-select the ballot language while voting. The option
14 to select the ballot language is first presented once the
15 voter inserts their voter access card. And they can
16 change their ballot language selection anytime while
17 voting again by returning to the instruction screen.

18 A 4th firmware modification is the ability to
19 self-select a high contrast option. And under that
20 subsection I'd actually like to direct the panel's
21 attention to page 2 of the report, the second line under
22 Ability To Self-Select High Contrast Option. Where it
23 says, "black on white screen", it should say, "white on
24 black screen."

25 And that high contrast option again is available

1 to the voter to select any time while voting, again by
2 returning to the instruction screen.

3 The AccuVote-TSx also presents an improved
4 summary screen. It's improved in that the voter does not
5 just scroll to review their voting options. Once the
6 ballot has been completely voted, the voter touches the
7 "Next" button to advance to the summary screen. On the
8 summary screen they are presented with the voted races.
9 Voted races are presented in white. Unvoted or
10 under-voted races are presented in red.

11 They can touch the races they wish to review,
12 return to the races to review them, change their options,
13 and then press summary screen when they are done
14 reviewing -- to return to the summary screen again
15 reducing any need to scroll.

16 A last modification to the firmware is a
17 confirmation for casting ballot option. The voter can
18 cast their ballot by touching the "cast ballot" button.
19 An election jurisdiction may opt to provide a confirmation
20 screen prior to the ballot being finally cast.

21 The vendor is also bringing forward a number of
22 software modifications. Primary areas of change include
23 fixes in changes to reports, additions of new reports,
24 additional logging capabilities and fixes in changes of
25 import and export utilities.

1 Based on the successful completion of testing by
2 both the federal ITAs and by the State technical
3 consultant, it is the recommendation of staff that Diebold
4 Election Systems application be approved for use in
5 California, subject to the standard terms and conditions
6 for approval.

7 CHAIRPERSON KYLE: Is that all, Brianna?

8 MR. LIERMAN: Yes.

9 CHAIRPERSON KYLE: Dawn, do you have anything to
10 add on the technical aspect?

11 MS. MEHLHAFF: If the panel wishes, I'd be happy
12 to walk through some of the software changes or the
13 testing parameters. But, you know, as Brianna mentioned,
14 you know, the vendor currently has a certified system,
15 what they call the TS in California.

16 And this, although they're marketing it and
17 calling it the TSx, it's essentially a modification of
18 that original system. The firmware is very similar.
19 There are some modifications to it, as Brianna mentioned.
20 The GEMS software actually both runs the vendor's old
21 version, the new version as well as their optical scan.

22 Those modifications included -- you know, they
23 were pretty minor in the sense that they allowed for some
24 extra reporting functions. I mean there are some. It
25 allows the jurisdiction to sort by like write-in name and

1 different things like that. So nothing really in the
2 tabulation part of it, just more reporting, some
3 functionality added, you know, some footers on the bottom
4 of the reports. Those types of things. Just some things
5 that their customers asked them to do just for
6 user-friendliness.

7 And the hardware, as Brianna mentioned, is
8 packaged a little differently. Basically, it's a lighter
9 unit is the big difference. And the accessibility keypad
10 now clamps on the front. So that's a nice feature that
11 they did.

12 But essentially it's a modification of their
13 current system with you know the basic modifications that
14 Brianna mentioned. And I'd be happy to answer specific
15 questions or walk you through the testing, if that's what
16 you were interested in.

17 CHAIRPERSON KYLE: Let me ask the panel. Before
18 we go to either that or comments of the vendor, are there
19 any questions of Brianna or Dawn?

20 PANEL MEMBER GUTIERREZ: I have one question.

21 CHAIRPERSON KYLE: Chon.

22 PANEL MEMBER GUTIERREZ: The machine that you
23 tested was a fully configured machine. It was not a
24 production model, but it was a real live machine?

25 MS. MEHLHAFF: That's correct. And we actually

1 installed -- part of our testing parameters is we're the
2 ones that -- we'll install the trusted software, which
3 means we actually obtained the software from ITA in the
4 sense of the certified version. And we actually wiped
5 their system clean and installed it, so that we are
6 operating from a trusted version and we controlled the
7 software installation. But, yes, the model that they did
8 is a model that they will use in California.

9 PANEL MEMBER GUTIERREZ: And it's the model that
10 reflects the slimmed down version, 25 pounds?

11 MS. MEHLHAFF: Correct.

12 PANEL MEMBER GUTIERREZ: Thank you.

13 CHAIRPERSON KYLE: Bernard, any questions?

14 PANEL MEMBER SORIANO: Dawn, you said it was the
15 system before us the TSx is simply just a modification of
16 the current TS voting system, which is already approved,
17 correct?

18 MS. MEHLHAFF: Correct. Their TS, which if
19 you've seen the documentation, they refer to it as their
20 R-6, but in California it's marketed as the AccuVote-TS.
21 And the TSx is just a modification of that system.

22 PANEL MEMBER SORIANO: That's all I have.

23 CHAIRPERSON KYLE: Tony, anything?

24 PANEL MEMBER MILLER: Yeah, I just have a
25 question on the staff recommendation you indicate one of

1 the standard terms and conditions resolution to the
2 write-in section of the procedures. I'm not familiar with
3 what that -- what does that mean, resolution to the
4 write-in section of procedures, I apologize?

5 MS. MEHLHAFF: Write-in means that, you know, any
6 county can use them subject to the Voting Rights Act or no
7 Modifications can be made. Those are all the standard
8 recommendations. That first one, the resolution the
9 write-in section of the procedures, that has been
10 resolved.

11 That's something that we found during testing.
12 And their procedures didn't address it to the satisfaction
13 of staff and the technical consultant, so we, at the time
14 when we were going to present this, that was an
15 outstanding item. The vendor has since made that minor
16 change. We just asked him to put a sentence in, the
17 write-in category for advisement to the county registrar
18 and how to process them, and so that's been resolved.

19 PANEL MEMBER MILLER: Thank you.

20 CHAIRPERSON KYLE: Caren?

21 PANEL MEMBER DANIELS-MEADE: No questions.

22 CHAIRPERSON KYLE: Mr. Mott-Smith.

23 PANEL MEMBER MOTT-SMITH: I'm interested in 2
24 things. One, did you look at the firmware changes from
25 the point of view of the voter? And if so, can you talk

1 about those?

2 MS. LIERMAN: You mean in terms of how it better
3 serves the voter?

4 PANEL MEMBER MOTT-SMITH: Yeah. One of the
5 criteria that we use, aside from security, accuracy, et
6 cetera, is the voter friendliness, user friendliness, et
7 cetera.

8 And there's a series of things that affect the
9 voter in what we're talking about here.

10 MS. LIERMAN: Ms. Mehlhaff actually tested the
11 system. But in terms of what I read, the ability to
12 change your options while voting, I think presents a more
13 voter friendly system. They can change their font size.
14 A voter might select to start within one language while
15 they're voting, could get to a point where they can't do
16 it anymore and return and change their option.

17 I don't know if that's what you mean in terms of
18 being more friendly to the voter. Changing the contrast
19 on the screen while they're voting. These again all lend
20 to being a more voter friendly system.

21 Ms. Mehlhaff might want to add something.

22 PANEL MEMBER MOTT-SMITH: Okay. In terms of the
23 testing, did you have any sense of that?

24 MS. MEHLHAFF: I mean, like I mentioned, this
25 essentially is a modification to their current unit. So

1 besides the weight and some other functionality, it's
2 going to look very similar. So if a voter -- if a county
3 is using the current system and they use this one, I think
4 in terms of how the voter uses it, I don't really know if
5 the voter is going to go, "Oh, my gosh, this is a new
6 system from what we used last time."

7 There are some different features as Brianna
8 mentioned. Probably the most significant for an actual
9 voter, currently on that system when you insert the
10 voter -- basically the voter access card, the card that
11 the poll worker gives the voter to bring up that
12 particular ballot type. What they did for this new unit,
13 because it is a stand-alone case and booth, there's, for
14 lack of better word, kind of a hologram where the voter
15 access card goes into, that shows kind of where the voter
16 should put it in. So that's kind of a new -- they put a
17 decal essentially on it to show the voter exactly where to
18 put it. So as far as a voter -- being more user friendly
19 that's a nice feature that they did.

20 But beyond the things that Brianna mentioned, I
21 don't think I can add much to that.

22 PANEL MEMBER MOTT-SMITH: Okay. And then this is
23 the first time I think we've seen something that's gone
24 through the 2002 federal standards; is that correct?

25 MS. MEHLHAFF: That is correct.

1 PANEL MEMBER MOTT-SMITH: Can you summarize what
2 the differences are or tell us what the differences are in
3 terms of the testing standards.

4 MS. MEHLHAFF: It takes the vendors a lot longer.
5 I'm sure they'll tell you that. I know you don't want me
6 to get too technical on you. But essentially you have the
7 1990 standards, and when we talk to -- well I can talk
8 generally at this point.

9 But the 1990 standards would allow vendors to
10 come forward and test components of their systems. So if
11 they just had one minor firmware change, they could
12 essentially just get that component changed, and put that
13 to the federal ITAs and they would test that and issue it
14 to NASED and get the NASED number and then it would come
15 to the State for testing.

16 One of the big changes at least from a practical
17 standpoint for the vendors, is in the 2002 standards,
18 they're not allowed to do that any longer. So as the
19 vendor does make a component change, the ITAs won't test
20 just that component. They'll test the entire system.

21 And so if they do just make one change somewhere,
22 they still have to take the entire system back in for
23 testing on the new standards, which has delayed the
24 process and caused some -- a little bit longer time line
25 for the federal ITAs.

1 There are some very technical changes that they
2 have to do there. There are some source code rewrites
3 that have to be done to a new standard a new language that
4 the ITAs aren't recognizing the older versions. And so
5 they're making them come in and do some rewrites to source
6 codes and different things like that. So, you know, and
7 there's extra security enhancements they have to go
8 through. The hardware testing is the same in terms of the
9 1990 versus the 2002 standards.

10 So I mean there's a variety of stuff that they
11 have changed in the 2002 standards, mostly related to
12 security.

13 PANEL MEMBER MOTT-SMITH: Thank you.

14 CHAIRPERSON KYLE: Anything else?

15 PANEL MEMBER SORIANO: Just to follow up on what
16 you said, Dawn. Because those standards entail a full
17 testing of any modification then, does that mean the TS
18 system, which originally was certified, needed to go
19 through regression testing for the full TSx?

20 MS. MEHLHAFF: Yes. They did go through
21 regression testing.

22 PANEL MEMBER SORIANO: Okay. Thank you.

23 CHAIRPERSON KYLE: Any comments from the vendor?

24 MR. KAPLAN: Not at this time.

25 CHAIRPERSON KYLE: Then why don't we take public

1 comments.

2 The first one is Kim Alexander, California Voting
3 Foundation.

4 Ms. Alexander, we have a podium and microphone
5 over here.

6 MS. ALEXANDER: Good afternoon.

7 I have a couple of my own questions about this
8 new model that's under consideration. First of all, I'm
9 wondering what the status of the investigation is that was
10 announced at the last meeting last Monday, which was the
11 reason why this item was not taken up last Monday. So I
12 was hoping that today we would hear some sort of summary
13 from this panel about what happened with the Secretary of
14 State's investigation into this vendor, Diebold,
15 installing uncertified software into use in a California
16 county. So I'm hoping that there will be some discussion
17 of that.

18 I'm also wondering at what point a voting machine
19 becomes a new model? It's sort of a philosophical
20 question, but we're talking about a machine that is
21 significantly different in its hardware, and it weighs
22 half as much as the previous machine. It's marketed by
23 the vendor as a different model number, the TSx.

24 And I take issue with the characterization of
25 this machine as simply being a modification of the TS. I

1 realize that the internal workings of the machine may be
2 significantly the same in terms of the same GEMS software
3 program being used.

4 But my understanding is that any new model for a
5 voting machine has a more rigorous testing process than it
6 needs to go through than simply a modification. So I
7 would like to hear from the Committee how you distinguish
8 the differences between a modification and a new model,
9 which I believe this machine does represent a new model?

10 Thirdly, I'm wondering if there have been any
11 changes made to Diebold's software in light of recent
12 studies that have been done by computer scientists Johns
13 Hopkins University and Rice University, as well as the
14 report by SAIC, which was commissioned through the State
15 of Maryland, which also is in the process of acquiring
16 this equipment.

17 These studies revealed that there were serious
18 flaws with this voting system software. And I'm not aware
19 whether the Secretary of State's office here in California
20 has yet taken any changes or modifications to Diebold
21 equipment that's in use in 14 counties right now in
22 California, including optical scan systems, based on the
23 findings of both of those reports that have been out for
24 several months now.

25 I notice that the machine is not here, which also

1 concerns me, because this panel is being asked to certify
2 a machine that is not visible for you to see, for you to
3 pick up, for you to inspect with your own eyes. It seems
4 to me that that should be a routine part of the
5 certification process that the machine be here.

6 And, in fact, at previous Voting System Panels'
7 meetings, such as when this panel certified the Avante
8 machine for use in Sacramento, you did have the model
9 here, and you were able to test that machine, and be able
10 to discover that it did work the way that staff was
11 reporting that it did.

12 Finally, I am dismayed to hear from the staff
13 report that there was no mention whatsoever of whether the
14 new AccuVote-TSx machine is capable of producing any kind
15 of printed ballot image for the digital ballots that are
16 cast on this machine. This is not yet a certification
17 requirement for California, but it is a requirement, as
18 you all know, for acquiring funding through the Prop 41
19 Voting Modernization Bond Act, which provides \$200 million
20 in State matching funds to counties that acquire more
21 modern voting systems.

22 And the Voting Modernization Board has decided
23 that the language inside Prop 41 was not as strict as
24 some, including myself, believed that it would be. But
25 they did say that the machines that get Prop 41 funding

1 must be capable of printing a paper ballot image for every
2 digital ballot cast. And that Voting Modernization Board
3 is relying on this Voting Systems Panel to check and make
4 sure that that's happening. And if it's not part of the
5 certification procedures, if part of your testing doesn't
6 include making sure that these machines are, in fact,
7 capable of printing a paper ballot image for every digital
8 ballot cast, and I'm not talking about voter-verified
9 printing at the time that the polls are open while the
10 voter is present, I mean after the fact.

11 Even that minimum standard of a paper trail, as
12 far as I know, has not been examined by the Secretary of
13 State's staff or if it has, it has not been reported here
14 today.

15 So I think out of looking out for those counties
16 that are expecting to get those Prop 41 funds, that it is
17 the responsibility of this Committee to ensure that
18 whatever systems that you do certify will meet the Prop 41
19 standards as they've been passed by the voters of
20 California and as they've been interpreted, at a minimum,
21 by the Voting Systems Panel.

22 I'm happy to stay up here and hear any responses
23 or let you take my questions.

24 CHAIRPERSON KYLE: Thank you, Kim. As usual,
25 good points. I would like to follow up on one of those,

1 if I may. What is the status of this machine being able
2 to produce a paper trail at the end of the day.

3 MS. MEHLHAFF: The machine is capable. We did
4 test that. It does not have the capability -- well, we
5 did not test for a voter verifiable option. That's not
6 part of this unit in terms of going through federal
7 testing.

8 But in terms of -- the way that the system
9 resides, you have the voting booth. You have the tablet.
10 And to the right there is a locked compartment with the
11 tape in there. And it does produce a zero report at the
12 beginning of the day. And we tested it also to produce a
13 zero report -- or a zero report and a summary report at
14 the close.

15 And then the system does have the ability to
16 produce ballot images for use in the one percent manual
17 recount.

18 CHAIRPERSON KYLE: And are you aware of whether
19 it has the ability to upgrade to a voter verified paper
20 trail?

21 MS. MEHLHAFF: I'm not aware. We did not test
22 that function, because that was not a part of the
23 functionality of this system.

24 CHAIRPERSON KYLE: I'd like to direct that
25 question to the vendors, if I may.

1 MR. KAPLAN: The system can, once it's determined
2 if that is in deed part of the requirement, it would be an
3 add-on unit, and the system does have the capability of
4 producing that.

5 CHAIRPERSON KYLE: Thank you. Anybody else on
6 the panel want to follow up on any of that?

7 PANEL MEMBER MILLER: Yeah, I would like to --
8 maybe if the vendor can respond to whether or not there's
9 been any response to the studies, which Ms. Alexander
10 referred, software changes or whatever in response to
11 the --

12 MR. KAPLAN: There are no requirements for
13 testing currently at the national or at the State level of
14 California for those standards. We have demonstrated
15 those to Maryland to SAIC and to the Wyle Laboratories,
16 independent testing authority. They have reviewed those.
17 They acknowledge that they work, but there's no specific
18 standard that all the vendors have been tested to on
19 those. But we have incorporated those and so demonstrated
20 them.

21 PANEL MEMBER MILLER: Thank you.

22 CHAIRPERSON KYLE: Kim, we'll answer your
23 question on the status of the investigation a little
24 later.

25 MS. ALEXANDER: Thank you.

1 CHAIRPERSON KYLE: Thank you.

2 Mr. Joseph Holder.

3 MR. HOLDER: Good afternoon.

4 Is this working?

5 CHAIRPERSON KYLE: It's working.

6 MR. HOLDER: I attended October 9th and then I
7 came up here last week, and I missed the meeting because
8 it was so fast.

9 I'm glad that Kim brought up the points that she
10 made. She did bring up the items of the SAIC report and
11 Johns Hopkins report. I did have some questions because
12 the Seattle Times ran an article last week regarding
13 the -- they just had a new elections director up there in
14 King County. And he implemented some immediate steps
15 before their primary and then their -- in September then
16 also their November election.

17 I didn't hear anything again today addressing any
18 issues regarding these security things. I just heard that
19 there's not requirements set in place for testing for
20 checking for these securities, which is currently in place
21 in California. And I'm surprised to hear that.

22 I do have some questions that I did come prepared
23 with. Especially with this being the TSx is supposed to
24 be a modification of TS. And TS is part of an integrated
25 voting system. And so that if you alter one component of

1 that, you have to be influencing all components of that.

2 What I wonder is since any electronic voting
3 system must be considered and evaluated as a whole, not
4 just as individual components, what actions has the
5 Secretary of State's office taken to address the known
6 security issues that were contained in the SAIC report and
7 in the Johns Hopkins' report regarding the Diebold Voting
8 System?

9 And in what specific ways does the TSx system,
10 being submitted for certification, address those issues?

11 What steps has the Secretary of State's office
12 taken to address the issue that the GEMS database, which
13 is part of the TS and the TSx system proposed, can be
14 accessed via Microsoft Access, which was also admitted to
15 last week by the director of the elections up in
16 Washington State?

17 The Johns Hopkins report and the SAIC report
18 listed some critical security issues that related to the
19 entire process in various stages at which things could be
20 altered and which things may not be accurately reported or
21 recorded. And I've not heard anything regarding that.

22 I also do not know -- I was under the
23 understanding that the TSx also gave the capability of
24 wireless transmission of the data contained at the ballot
25 station. And I would like to know is that a fact with the

1 system that is being asked to be certified here or not?

2 The other thing that Kim brought up, I'm glad
3 that she brought it up, and that was the Prop 41 issue.

4 There were some new sections of the Code that
5 were added by that proposition. And it did call for some
6 things. And under Section 19370, it did call for that at
7 the end of the polling. At the close of the polls, there
8 was supposed to be reports printed out and not just a
9 general tally of the total votes, which would be compared
10 to how many voters were voting that day.

11 But it also calls for that there is supposed to
12 be a printout of the actual votes for each candidate for
13 each measure by that system. And I'm wondering is that
14 currently part of the certification for this? Was that
15 tested? And are those capabilities in this new TSx?

16 And the other issue then that was raised is if
17 counties start buying these machines now and they do not
18 have features that are probably going to be required later
19 under the Elections Commission that will be formed, are we
20 not then asking the counties later on to add on additional
21 costs that they may not have budgeted for?

22 CHAIRPERSON KYLE: Mr. Holder, that's been five
23 minutes -- if you have one more question, that's fine.

24 MR. HOLDER: No. I have that -- also, the other
25 problem I have is that it's been difficult, and I'm just

1 wondering can the panel or can the Secretary of State's
2 office have available on their web site some of the
3 information that has been submitted by various vendors in
4 order to get applications through so that there can be
5 review?

6 Part of the application is to fill out a form and
7 to give detailed details of what the changes will be that
8 they are proposing for the new modification. And I've not
9 been able to see that yet.

10 CHAIRPERSON KYLE: Thank you. Those are all
11 interesting questions. The last point is a good one. As
12 is the concerns for the counties' future finances, which
13 is something we grapple with every day. In our
14 considerations, it's just about everything, including
15 election systems.

16 Does anyone on the panel want to pursue any of
17 those questions?

18 PANEL MEMBER MILLER: Mr. Chairman, if I could
19 ask staff to respond to any of the points raised by Mr.
20 Holder if they would wish.

21 MS. MEHLHAFF: Certainly. In terms of the data
22 transfer, the system -- the data vote tallies are sent
23 from the DREs, either from direct modem or from physically
24 transferring the result cards.

25 CHAIRPERSON KYLE: Does that direct modem mean

1 wireless?

2 MS. MEHLHAFF: No. Basically, it would be from a
3 central unit. And so if they had remote sites, the card
4 would go to one site or by sites and then they would
5 transmit the results from those sites into the county
6 office. So it wouldn't be necessarily from each polling
7 place.

8 CHAIRPERSON KYLE: How will they be transmitted?

9 MS. MEHLHAFF: It would be over a phone line.

10 CHAIRPERSON KYLE: Okay.

11 MS. MEHLHAFF: And that's a county security
12 process that would be involved in terms of secure lines
13 and those types of things.

14 In terms of the -- and I can only speak briefly
15 to the Maryland report and the Johns Hopkins report. But
16 I can tell you that this model that's in front of you
17 today was tested at the 2002 standards, which required a
18 detailed software source code review, under the new
19 stringent standards, which required an update or a
20 correction of some of the software engineering problems
21 that were mentioned in the Johns Hopkins report.

22 In terms of some of the fixes in the Maryland
23 report, those versions are currently with the federal
24 ITAs. And so we will not see those until the vendor has
25 successfully completed testing at the federal level and

1 then brings them to us for use in California, which then
2 they go through State testing and the whole process again
3 on those changes.

4 PANEL MEMBER MILLER: Ms. Alexander indicated
5 that it was her belief that there was a difference in the
6 certification process based on the modification for any
7 new system. Could you respond to that.

8 MS. MEHLHAFF: The ITAs essentially make that
9 determination. And previously what they would do in the
10 1990 standards is they would just component test. They
11 have received instructions and it mostly only applies to
12 the hardware folks. But it does apply to software in a
13 limited degree.

14 But because the 2002 standards have taken such a
15 long time to write the reports, and they're just kind of
16 being inundated, NASED, which is kind of the oversight,
17 has instructed them that if it's a minor -- a really minor
18 change, that they could still do component testing. But
19 those would be tested to the 1990 standards. And that's
20 just kind of a separate issue.

21 But in terms of modification testing or the full
22 testing, both of these were fully tested by the ITAs. And
23 it was determined that it was a modification based upon
24 the limited functionality changes between the two devices.
25 And that was essentially a consultation with our technical

1 consultant.

2 CHAIRPERSON KYLE: I think to the larger question
3 of what has the SOS agency done? We're at the tail-end of
4 issuing a report that incorporates -- addresses a lot of
5 that, separate from this.

6 CHAIRPERSON KYLE: Anything else?

7 PANEL MEMBER MILLER: Thank you, Mr. Chairman.

8 CHAIRPERSON KYLE: Any other questions?

9 Did you have any of those in writing?

10 MR. HOLDER: Any what?

11 CHAIRPERSON KYLE: What you asked, did you want
12 to submit that in writing?

13 MR. HOLDER: Not today.

14 CHAIRPERSON KYLE: Mr. Jim March.

15 MR. MARCH: Hello folks. I have several
16 concerns. Thank you for allowing public input on this
17 matter.

18 My first concern revolves -- at what point do
19 we -- the same question Kim asked. At what point do we
20 declare a modification minor or not? This arises because
21 the TSx has been described as a minor modification to the
22 TS. Yet, on August the 15th, an Ohio newspaper published
23 an article in which Diebold spokesman Mark Radke, who's
24 described as a director of Diebold Election Systems, he
25 said the following to the newspaper on the code, that

1 means the code that John Hopkins university studies, "is a
2 very very small part of the current code. Diebold's new
3 AccuVote-TSx machine is based on totally different source
4 code."

5 So he's saying to this Ohio newspaper, they
6 rewrote every singly part of the software out of the
7 terminals. And it's being described to your office as a
8 minor modification. That bothers me.

9 I am even more concerned -- back to this again.
10 First of all, do you intend to release information on what
11 you were investigating in Alameda county? What piece of
12 the Diebold software was used in the field that was
13 uncertified? Do you intend to release that information?

14 CHAIRPERSON KYLE: I'll answer in a second. Do
15 you want to finish off with your questions.

16 MR. MARCH: No problem. Well, I hope you do.

17 As to wireless transmission of results, that's
18 already happening. I can put you in contact with a
19 polling place worker who observed results being modemed in
20 with a cellular modem in Marin County over a completely
21 unapproved hardware. That's why the optical scan changes
22 still goes to vendor credibility and trustworthiness.
23 That's completely unapproved and untested hardware.

24 I want to know what process is in place to make
25 sure commercial off-the-shelf software remains commercial

1 off-the-shelf out in the field. There's two major pieces
2 of software that Diebold has declared to be commercial
3 off-the-shelf software that was used in the proposed
4 voting system.

5 There's Windows 2000 used on the same box running
6 GEMS at the county headquarters. And there's Windows CE
7 that's running out on the terminals. Now, a review of
8 Microsoft technical documents will tell you that Windows
9 CE has to be modified by the hardware vendor to meet local
10 conditions. Extensively enough, that by my reading of
11 Federal Elections Commissions, either the 1990 or 2002
12 regs, Windows CE cannot be declared commercial
13 off-the-shelf software. It can't be. It's too heavily
14 modified by the vendor.

15 So if that's not commercial off-the-shelf
16 software when it was declared to be, that means that
17 nobody's checking to see whether commercial off-the-shelf
18 software remains commercial and off-the-shelf or modified.
19 And if nobody's checking, that means more than 50 percent
20 of the total code involved in this system, on both the
21 terminals and the central GEMS box are unchecked by
22 anybody. More than 50 percent of the code used in this
23 machine only Diebold knows what's really going on.

24 I have big concerns about that. Very large
25 concerns.

1 A review of the various internal E-mails, which
2 you all have a best-of collection from me, contained in my
3 memos of 9/19/03 and 10/16/03, those internal memos point
4 to ethical failures on Diebold's part on a scale with
5 WorldCom and Enron or Arthur Andersen.

6 And then to show that more than 50 percent of the
7 codes in the terminal -- of the code in the terminals at
8 the central box are untested, uncertified by anybody, I
9 have big concerns, massive concerns about that.

10 And I hope this panel will address that before
11 certifying this product.

12 You're our watchdogs and I truly hope you'll take
13 that duty seriously.

14 Thank you very much.

15 CHAIRPERSON KYLE: Thank you, Mr. March.

16 Did you give anybody the example of your Marin
17 county example?

18 MR. MARCH: No, but I can put you in contact with
19 the eye-witness who observed use of cell phones to modem
20 results in from a precinct -- of the OptiScan terminal. I
21 can put you in contact with the eye-witness of that within
22 24 hours. I know who knows them.

23 CHAIRPERSON KYLE: Okay. Thank you.

24 MR. MARCH: I'd be glad to do that.

25 Thank you.

1 CHAIRPERSON KYLE: Any questions or issues that
2 Mr. March raised that the panel would like to pursue?

3 PANEL MEMBER MILLER: Mr. Chairman, I would like
4 for you to invite the vendor to speak to any of those, if
5 the vendor would like to.

6 CHAIRPERSON KYLE: Okay.

7 MR. KAPLAN: Let me explain that the --

8 CHAIRPERSON KYLE: Would you mind coming to the
9 podium and also giving your name.

10 MR. KAPLAN: Yes. Frank Kaplan with Diebold
11 Election Systems. The AccuVote-TSx has gone through the
12 complete 2002 standards, which means all of the lines of
13 code were examined and commented, et cetera. The changes
14 and enhancements, et cetera, have been examined completely
15 by the ITA.

16 There's a reason that it was asked as the first
17 company that's gone through it. It was, I want to say, 9
18 months that it took us to get completely through that.
19 This was an enormous undertaking and we've very pleased to
20 be standing before you having gone through all of that.

21 Our units -- someone asked if it can printout.
22 It not only can, it does printout so at the end of the day
23 every ballot image can be printed off of every unit, just
24 as it is with the TS unit.

25 I'm not sure, Mr. Miller, if you had another

1 concern specifically.

2 PANEL MEMBER MILLER: I just wanted you to
3 respond to anything that you wished to with respect to the
4 test and what it presented.

5 MR. KAPLAN: As far as wireless, we're talking
6 about 80211(b) or whatever, that is not being brought
7 before this committee at this time. It's not being
8 brought before you.

9 As far as modem, point-to-point transmission,
10 that is a county option. We currently do it in certain
11 counties. Other counties do not. That's a procedural
12 issue, not a technical issue, per se. It's county
13 determined.

14 I can't think of any of the other specifics that
15 were --

16 PANEL MEMBER MOTT-SMITH: Just to clarify. So is
17 it possible that there is wireless communication or
18 transmission of election results?

19 MR. KAPLAN: No, not with these units. None of
20 them have 80211(b) card, even in them.

21 PANEL MEMBER MOTT-SMITH: Is that your
22 understanding, staff?

23 MS. MEHLHAFF: That's correct.

24 CHAIRPERSON KYLE: Thank you.

25 MR. MARCH: Can I add one sentence on the record?

1 CHAIRPERSON KYLE: One sentence on the record.

2 MR. MARCH: If the Federal ITAs bought Diebold's
3 line that Windows CE is commercial off-the-shelf software,
4 then the ITA made a horrendous mistake and therefore the
5 ITA's testing process and thoroughness has to be called
6 into serious question.

7 Thank you.

8 CHAIRPERSON KYLE: Okay.

9 Are there any more cards out there that weren't
10 collected?

11 Then I believe there's a staff recommendation
12 before us. And Mr. Miller I believe you have a proposal
13 along the lines of accepting that recommendation with
14 certain conditions.

15 PANEL MEMBER MILLER: That assumes I can read my
16 writing.

17 Well, I move to accept the staff recommendation
18 minus the issue of the write-in section of the procedures,
19 and that has already been responded to, so that's no
20 longer an addition, as I understand it.

21 MS. MEHLHAFF: Correct.

22 PANEL MEMBER MILLER: But I would add 3 other
23 conditions as part of the motion. "In addition, Condition
24 number 1, Diebold shall pay the Secretary of State the
25 costs associated with an independent audit of Diebold's

1 hardware, firmware, and software, and all counties
2 currently using or in possession of Diebold Voting
3 Systems, or any part thereof, to determine what is being
4 used in and whether each component has been certified by
5 the Secretary of State."

6 The second condition to be added, "Diebold must
7 cooperate in full with the independent auditors, and the
8 SOS, Secretary of State, with respect to the independent
9 audit and the Secretary of State's internal review of the
10 certification of this system."

11 And 3, "Diebold must be present at and
12 participate in the next meeting of the Voting Systems
13 Panel hearing where the panel reviews the findings of the
14 independent audit and the Secretary of State's internal
15 review and makes a determination of what, if any,
16 sanctions are appropriate."

17 That concludes my motion. I would recommend -- I
18 would move to accept the recommendation, but conditioned
19 on the various conditions set forth by the staff in its
20 recommendation and these 3 additional conditions.

21 My 3 additional conditions are based upon the
22 fact that, although I apologize for not being at the last
23 meeting, I read reports and understand that there was an
24 issue raised as to whether or not software had been
25 installed that had not been certified in elections. Now,

1 I understand, and this is not part of the motion, this is
2 discussion, Mr. Chairman.

3 I understand from the staff report that there is
4 no question in the staff's mind and the consultant's mind
5 that the voting system for the panel does work, that it's
6 accurate, that it's reliable, that it meets all of the
7 various federal and State standards.

8 But I'm very concerned if indeed software was
9 installed and was not certified by this panel. And these
10 3 conditions that I am suggesting, that I'm moving be
11 added to the staff recommendation, respond to those
12 concerns.

13 CHAIRPERSON KYLE: Dawn, don't we have a --
14 aren't we looking at a possible VSP meeting some time in
15 mid-December?

16 MS. MEHLHAFF: Yes. We're looking at December
17 16th.

18 CHAIRPERSON KYLE: Okay. Is something already --
19 we have one request already for that date?

20 MS. MEHLHAFF: Correct.

21 CHAIRPERSON KYLE: Okay. So I'd just modify that
22 to "...participate in the meeting on December 16th."

23 PANEL MEMBER MILLER: I accept that, Mr.
24 Chairman, as part of the motion.

25 CHAIRPERSON KYLE: Do I hear a second?

1 PANEL MEMBER MOTT-SMITH: Second.

2 CHAIRPERSON KYLE: All those in favor of the
3 motion?

4 PANEL MEMBER MILLER: Any further discussion, Mr.
5 Chairman?

6 CHAIRPERSON KYLE: I want to just say that I know
7 that you gave this a lot of consideration, Tony, as have I
8 and a lot of the members of the panel based on staff
9 reports, that the review being conducted by the Secretary
10 of State's office is still ongoing. And we believe that
11 an audit will help identify any potential problems, clear
12 up any misunderstandings and help bring certainty to
13 something that's a little murky right now.

14 So we get good recommendations for a conditional
15 certification. And then taken with a conclusion of our
16 internal review and with an independent audit of those
17 counties where Diebold Voting Systems exists, we can then
18 make a determination if any sanctions are appropriate, if
19 any actions are needed in any direction, and move forward
20 from there.

21 MS. ALEXANDER: Can I just ask a clarifying
22 question, Mark.

23 So you're moving to give Diebold a conditional
24 certification?

25 CHAIRPERSON KYLE: Correct.

1 MS. ALEXANDER: Does that mean that they have to
2 wait until December 16th before their machines can be
3 deployed in California counties, these new TSx machines?

4 CHAIRPERSON KYLE: It means they could be
5 deployed up to the 16th, but by the 16th we'll make a
6 determination as whether to go forward.

7 PANEL MEMBER MILLER: That is the sense of my
8 motion, Mr. Chairman.

9 MR. ERDMAN: I'm Austin Erdman Assistant
10 Registrar of San Joaquin County. I'm here to say a few
11 words about the Diebold's Election System. These folks,
12 while they're coming up here and telling you about
13 information, these are all perceived problems. These are
14 not real problems.

15 Diebold has had their election system in the
16 United States for I don't know how many years. They've
17 been conducting elections all across the United States.
18 They're here now before you to approve a piece of hardware
19 and software that we're hoping to use.

20 If you put this on a conditional type of
21 situation for us, it makes it very difficult to be able to
22 go to our boards and back to your panel for the funds, the
23 Proposition 41 funds.

24 What you're asking is two different things. Does
25 the software and hardware work? It does. The questions

1 that come over here, that's what's perceived, is you were
2 not notified, the panel was not notified of some issues
3 regarding whatever happened. And I don't know what those
4 issues are completely. And those are between you and
5 Diebold.

6 But I'm asking you to reconsider your thoughts
7 and consider what's going on here and to consider the
8 realistic situation of we're trying to approve a piece of
9 hardware and software that I believe and I think it has
10 been proven across the United States actually worked. If
11 they have done something wrong or there's been a wrong in
12 someway to the panel et cetera, that should be a separate
13 issue. And you guys should address that as a separate
14 issue.

15 And that's pretty much when you look at this
16 whole thing, that's the way it is. It's a perceived
17 issue. It's not a real issue. The real thing is that
18 Diebold Software has counted correctly, the hardware has
19 worked throughout the State and throughout the nation.
20 And I ask that you take a look at that before you make
21 these decisions.

22 Thank you.

23 CHAIRPERSON KYLE: Thank you. Would you mind
24 spelling your last name, please E-r-d-m-a-n.

25 CHAIRPERSON KYLE: Thank you. Those

1 considerations have been taken by Tony, I know that, by
2 myself. And they're very important to us, very important
3 in deed.

4 PANEL MEMBER MILLER: If I could add to that, Mr.
5 Chairman. If I thought for one moment that this system
6 didn't work properly, then I wouldn't have made the motion
7 at all, clearly. But I'm also very concerned about the
8 process and to make sure that the process is followed so
9 that we do avoid, down the road, any problem.

10 And if there's a problem here, I want an
11 opportunity to find out about it. So that's why I'm
12 proposing, in deed, conditional certification. And I
13 realize the problems that that creates. But this is so
14 important that we get it right, that we don't -- I would
15 rather err on the side of inconvenience and delay and
16 whatnot. It's absolutely imperative that we ensure that
17 the process is followed and that the systems in deed work
18 as they are designed and advertised to work.

19 PANEL MEMBER MOTT-SMITH: If I can add, I guess a
20 question to you, Tony. What I heard you say was that
21 there were 3 conditions, none of which necessarily delay
22 the process.

23 The first is in an agreement to participate in an
24 audit of all of the equipment at all of the counties in
25 which there is Diebold equipment.

1 The second is to cooperate in with the auditor as
2 they look.

3 And the third is to appear at a hearing on the
4 16th.

5 Assuming that they agree to do those things, that
6 seems to me to be not a delay at all. Am I misreading
7 that?

8 MR. KAPLAN: Can I speak for a moment?

9 CHAIRPERSON KYLE: Hold on a second. Let Mr.
10 Miller respond.

11 PANEL MEMBER MILLER: I think that's absolutely
12 correct, Mr. Mott-Smith.

13 MR. KAPLAN: Yes. We have absolutely no problem
14 with those 3 conditions. I understand what the counties
15 are saying. We have a candidate filing 26th -- does
16 somebody remember -- of December? First week of December.

17 We're dealing with installation. We're dealing
18 with outreach. We're dealing, as we speak, with staff
19 training, et cetera.

20 What I would -- if I could be so bold as to
21 discuss. We will certainly -- and we do agree with all 3
22 of those conditions. We welcome all 3 of those
23 conditions. For the sake of the counties, I would
24 strongly recommend that the certification be separate from
25 that. We will certainly be here at the next meeting. We

1 will certainly cooperate, and we will certainly go through
2 the audit of all of our customers. That tied to the
3 certification -- I personally, and for our company, don't
4 necessarily see that as tied to the certification.

5 We will agree to all of those without any caveats
6 at all. I'm just looking at trying to be able to do what
7 we need to do and what all of our family here in
8 California needs to do to successfully conduct the
9 elections.

10 PANEL MEMBER MOTT-SMITH: And I would
11 characterize that as a pretty strong statement to the
12 counties that are interested in this, that you intend to
13 meet those conditions.

14 MR. KAPLAN: And we do.

15 PANEL MEMBER MILLER: And one of the conditions
16 is to pay for the audit. Do I hear you say, representing
17 the company, you will in deed?

18 MR. KAPLAN: I -- our president is here. I don't
19 see any reason that we wouldn't. We just -- it's hard to
20 give you an open -- till we sit down with you and see what
21 the audit is. But if we're talking about reviewing
22 everything that's being run in all of our counties,
23 reviewing all of the hardware, firmware, et cetera, we
24 welcome that and we're all in favor of all of that.

25 And we're hopeful after that, that all vendors

1 will step to the plate and have all that done for all of
2 their systems also. We think that would be fabulous for
3 all of California.

4 PANEL MEMBER MILLER: That's coming.

5 MR. KAPLAN: Yeah, we appreciate that.

6 PANEL MEMBER MILLER: Thank you, Mr. Kaplan.

7 CHAIRPERSON KYLE: Two comments, Mr. March and
8 then the --

9 MR. MARCH: I would like 30 seconds to respond to
10 the gentleman from San Joaquin county.

11 CHAIRPERSON KYLE: Please.

12 MR. MARCH: In response to his general concept
13 that everything is going swimmingly, election night year
14 2000 in Florida, Al Gore suddenly lost over 16,000 votes
15 in a county that were caused by an uploaded second memory
16 card on a Diebold Optical Scan System. The memory card
17 had been copied, hacked and uploaded.

18 The loss of those votes caused him to almost
19 concede the election. Somebody figured out the
20 duplication of memory cards before that and he revoked his
21 resignation speech. And W. was rather pissed at that.

22 But the point is attempts to hack Diebold Systems
23 have happened. Security is an issue that this Board
24 should be very concerned with. It's a real world problem
25 not theoretical.

1 CHAIRPERSON KYLE: Thank you.

2 MS. WINSLOW: Thank you. My name is Laura
3 Winslow. I'm the Registrar of Voters in Solano county.
4 And I would like to agree with the Diebold recommendation
5 to keep the certification of this system separate from the
6 independent audit that will be conducted.

7 If we wait until December 16th to hear a
8 determination on this equipment, it forces us to postpone
9 our outreach into the communities that we have scheduled
10 for the month of December.

11 In Solano county, we have not conducted early
12 voting on any touchscreen system. So the voters in our
13 county are not familiar with touchscreen units. And it is
14 very important for us to be able to get out into the
15 community as soon as possible with the equipment we'll be
16 using, so we can get our voters familiar with it and move
17 on with our outreach process for the March election.

18 Candidate filing does end on December 5th. And
19 we will begin setting up our ballot layout to put our
20 ballots together. This also is an integral part of us
21 moving forward with the March primary election.

22 So my personal opinion to separate the
23 certification of the system here that has been proposed
24 and tested through ITA, through the federal study, and
25 everything -- every step of the way has passed in both

1 eyes, that I think the issue at hand with the audit should
2 be kept separate. And I would request that you move
3 forward with the certification process.

4 Thank you.

5 CHAIRPERSON KYLE: Thank you, ma'am.

6 MS. HENCH: I'm Debbie Hench, Registrar of Voters
7 for San Joaquin county.

8 And the concern for us is we make a decision on
9 December 16th that you guys are going to postpone
10 certification again, for whatever processes you want to
11 put in place, we're going to have to look at a different
12 system for the March primary. Because in December we're
13 ready to do ballot layout for whatever system we're using.

14 And our election process is integral in the
15 ballot layout of what system we have to select. At this
16 point, it's critical for us to have a system that we know
17 we're going to use, instead of having to wait and postpone
18 it.

19 If the system had failed in any way, none of us
20 would be asking for this. But it passed all certification
21 requirements up to the 2002 standards. It didn't pass
22 under the 1990 standards. So if it's passed all those
23 issues and we're talking about procedures or something on
24 that order, I really request that you separate those two
25 issues. Let us know we have a certified system that we're

1 going to be able to use on election day in March, so we
2 can plan for that. And then do the audits, set up new
3 procedures in areas you require them, and everyone of us
4 will follow those.

5 We just need to know that we're going with which
6 system and we need to know right away, not in December
7 when we're doing ballot layout.

8 Thank you.

9 CHAIRPERSON KYLE: Thank you. Tony, you're
10 basically suggesting 2 or 3 things from them is my
11 understanding. One, is technical systems okay. Two, go
12 ahead and certify it to conditional certification though.
13 And that based on the 3 items you outlined, we would then
14 review a number of the issues, predominantly procedural,
15 on December 16th. Is that a good summary?

16 PANEL MEMBER MILLER: Correct.

17 CHAIRPERSON KYLE: Kim, you had another point.

18 MS. ALEXANDER: I appreciate this discussion that
19 we're having. I think it's very helpful for everybody
20 here.

21 I don't see how these issues can be separated
22 when certification is the heart and soul of election
23 security in California, especially in the absence of a
24 voter-verified paper trail to reinforce and backup digital
25 ballots. So I don't think that you can separate these

1 issues.

2 The 3 counties that are waiting to receive
3 Diebold equipment, Kern, San Joaquin and Solano all
4 contracted with this vendor months ago, one of them as far
5 back as a year ago. They originally contracted for the
6 AccuVote-TS. And after the contracts were signed, the
7 story changed and suddenly they were instead waiting for
8 the TSx. And that is why this is an urgent matter right
9 now, because the counties changed the terms of their
10 contracts after they were signed.

11 So I really take issue with what I've seen over
12 and over again before the Voting Systems Panel, which is
13 there's an election coming up. People are under the gun.
14 The counties need their equipment. We've got to do this
15 now, and we just brush over these serious security
16 problems that we have in the state of California.

17 You cannot not tie these issues together. And I
18 am appalled to think that any vendor in California would
19 not take heed from the Alameda County Registrar of Voters
20 who said to the Oakland Tribune that they were extremely
21 disappointed with the way this vendor performed in their
22 county.

23 They said that they were not informed -- or they
24 had been misinformed, actually was the way that the story
25 has unfolded so far. They were misinformed by the vendor

1 that the equipment that was being installed in Alameda had
2 been certified and had been notified to the Secretary of
3 State, when, in fact, it had not.

4 How do we know that this new machine, this new
5 model and the procedures that will accompany it, will be
6 any different than what we just saw happen in the most
7 historic election that we've ever had in California, this
8 recall election.

9 We all know sitting in this room that if that
10 margin had been close, if it had not been an 11-point
11 spread, because of what happened in Alameda county being
12 the largest Democratically registered county in the State,
13 if the election had been close and there were questions
14 about these questions having arisen about Diebold software
15 in Alameda, the whole recall election would be called into
16 question.

17 We are all breathing a deep sigh of relief that
18 we're not in that position right now. It's going to
19 happen again. These vendors are -- this vendor, in
20 particular, we now know in California has installed
21 uncertified software and does not give me any confidence
22 to believe that this vendor will change its performance in
23 the new counties that it brings on when we know that in
24 Alameda at least there's been an issue already.

25 So I appreciate the motion that Mr. Miller made

1 and I believe that it is vitally important that the
2 Secretary of State and this panel come to some clear
3 resolution about the procedures and the certification
4 process and know that our state's processes are being
5 followed, that we are not Florida, and that we are
6 following certification procedures the way they were
7 written, the way they appear in statutes. And that we do
8 that before we send anymore of this non-transparent
9 unauditable equipment into the field in California.

10 CHAIRPERSON KYLE: Thank you. I'm going to allow
11 one last statement from someone who hasn't spoken.

12 MS. MCPHERSON: I'm Sally McPherson from San
13 Diego County. I just want to say that we're being put
14 between a rock and a hard place here. We have 10,200
15 devices that are going to need to come into our county.
16 We're already running late on this just because of the
17 stringent certification requirements that Diebold faced at
18 Wyle. You know it's getting to the point now that it's
19 actually probably almost impossible for us.

20 It's really tough for us to do this right now.
21 We've been working for a year. We think we can -- you
22 know, we think we'll be ready to go for March. To shift
23 to December 15th or 16th to optical scan, which would be
24 our other choice, would be nearly impossible.

25 And what I'm very fearful of right now is between

1 now and the middle of December we're not going to be able
2 to do some of the things that we need to do like outreach,
3 training, and so forth getting ready for those things. I
4 don't know. I think this is putting, particularly our
5 county, in a very bad position as well as the other
6 counties.

7 I just encourage you to separate these two issues
8 and go ahead and certify Diebold's system. At this point,
9 I hear from you no issues with Diebold's software about
10 Diebold software and I feel that these two issues should
11 be separated.

12 CHAIRPERSON KYLE: Thank you.

13 I'm going to call the question. Does anybody on
14 the panel need to have it rearticulated?

15 All those in -- pardon?

16 PANEL MEMBER MOTT-SMITH: Any discussion on the
17 panel?

18 CHAIRPERSON KYLE: Any discussion on the panel?

19 I do have a comment from the Secretary of which
20 I'll reserve till after the vote, having to do with some
21 of these items.

22 So all those in favor of Mr. Miller's motion say
23 aye?

24 (Ayes.)

25 CHAIRPERSON KYLE: All opposed?

1 (No.)

2 CHAIRPERSON KYLE: One no.

3 And any abstentions?

4 The ayes have it.

5 So I'm going to just make a comment on a
6 non-agendaed item. And it has to do with the concerns
7 that are raised by some of the recent alleged activities.
8 And I'm going to say alleged pending the conclusion of our
9 review.

10 But based on some of the recent activities or
11 what's perceived to have happened as well as a discussion
12 internally, externally with the folks interested, the
13 Secretary's proposing today and will be announcing further
14 proposals in the near future in conjunction with several
15 other programs to be rolled out, many of you who have been
16 waiting for, the following several items:

17 One, that when we're done conducting an internal
18 audit of the voting systems in all of those counties with
19 Diebold equipment that we'll continue on to look at those
20 systems that are currently in use and whether they're
21 certified in all counties in California. And that will be
22 taken up successively after we're done with the Diebold
23 counties first.

24 Two, that we were going to require that all
25 counties maintain a log of current versions of their

1 hardware, firmware and software, what's being used,
2 including documentation of any installation or
3 modification of the hardware, firmware and software.
4 Transmit copies of that log to the Secretary of State's
5 office at times to be determined by the Secretary of State
6 as appropriate.

7 Beginning in 2004, we'll start conducting random
8 audits of voting systems throughout the State to ensure
9 that all hardware, firmware and software, including any
10 modifications are currently certified for use in
11 California. And every county will be audited at least
12 once during each two-year period.

13 We're going to ask that as a part of each
14 certification application, we're going to require the CEO
15 or the organizational equivalent of the vendor to affirm,
16 under penalty of perjury, that the system or component is
17 certified. The vendor will not make any modification to
18 the system or component without first providing the notice
19 required by Election Code Section 19213, and obtaining
20 written SOS approval.

21 And acknowledging the failure to do so may result
22 in decertification of the system and possible criminal
23 penalties.

24 In addition, we're going to require each CEO or
25 the organizational equivalent to execute such a sworn

1 statement about all current systems being used in
2 California.

3 And currently under review by our agency are
4 changes to other procedures, and where the State law
5 states specifically, one of them we're considering
6 imposing one year or longer, debarment of any vendor that
7 materially violates certification laws. This debarment
8 would preclude certification of any new system proposed by
9 that vendor during the debarment period.

10 And as I said, there will be other proposals
11 coming within the next several weeks.

12 With that, I make a motion to close the Voting
13 Systems Panel?

14 PANEL MEMBER MOTT-SMITH: So moved.

15 CHAIRPERSON KYLE: Any opposed?

16 The ayes have it.

17 Thank you all very much for coming today and for
18 your statements and comments.

19 (Thereupon the California Secretary of State's
20 Voting Systems and Procedures Panel meeting
21 adjourned at 4:15 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Secretary of State's, Voting Systems
7 and Procedures Panel meeting was reported in shorthand by
8 me, James F. Peters, a Certified Shorthand Reporter of the
9 State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 12th day of November, 2003.

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23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
25 License No. 10063